

Natural Resource Damage Assessment and Restoration Advisory Committee

Subcommittee 4

July 26-27, 2006

Denver Federal Center, Colorado



Question #4:

- What additional measures should DOI consider to expedite planning and implementation of restoration projects and to ensure effective and efficient restoration after awards or settlements are secured?

Four Categories of Measures Suggested to the Committee at the March, 2006 Meeting

Measures to:

1. promote the use of consensus-building resources by all parties affected by an incident that causes natural resource damage;
2. encourage coordination and cooperation between cleanup agencies and trustees;
3. encourage full and constructive participation by responsible parties with cleanup agencies, restoration agencies, and trustees, and with their activities;
4. encourage flexibility and creativity in the design of settlements.

1. Promote the use of consensus-building resources by all parties affected by an NRD incident

Subcommittee said it would:

- Review case studies and other information on cooperative assessment to determine if it should make recommendations about cooperative assessment;
- Examine ways that tailored dispute resolution resources can be made available to parties;
- Consider how DOI can more fully integrate NEPA into the decision-making process;
- Explore the potential for additional funding sources to allow broader participation in assessment and restoration planning activities.

2. Encourage coordination and cooperation between cleanup agencies and trustees

Subcommittee said it would:

- Consider ways to improve the involvement of trustees in cleanup deliberations;
- Review existing coordination agreements between trustee agencies and response agencies to consider their terms and their implementation;
- Consider whether the limitation on the use of the Superfund related to NRDA is an actual barrier to DOI officials serving at EPA from also being involved in NRDAR;
- Examine other trustees' approaches to coordination with EPA and consider whether DOI should adopt similar approaches.

3. Encourage full and constructive participation by responsible parties with cleanup agencies, restoration agencies and trustees

Subcommittee said it would:

- Consider incentives DOI might use to promote constructive engagement by responsible parties;
- Consider whether the Executive Branch should identify goals) regarding desired outcomes, without impairing trustee authorities or discretion;
- Explore whether it would be beneficial for the trustees to identify/develop a portfolio of categories or locations of potential restoration opportunities.

4. Encourage flexibility and creativity in the design of settlements

Subcommittee said it would:

- Consider incentives for innovative, effective restoration proposals which emphasize restoration metrics rather than financial metrics whenever possible and appropriate;
- Consider whether it would be appropriate to develop specific strategies to further the interest that restoration can provide offsetting compensation when cleanup can't be completed or would cause unacceptable harm;
- Examine what actions DOI could take toward having the current cap on administrative settlements raised.

Additional Resources Needed/ Discussion Needed by Full Committee

- Outreach for access to a diverse set of case studies of “successful” and “unsuccessful” NRD settlements/cases.
- Suggested that there be Committee discussion of “what’s over the horizon” -- ways that circumstances giving rise to NRD may differ in the coming years.

Feedback Received from Committee, March, 2006 Meeting

- Some members felt scope was ambitious, subcommittee might want to pick a few of the items/areas to focus on; others felt strongly that it was too early to drop anything from the list of items to be considered.
- Subcommittee should add measures that could be taken post-settlement and/or that are more specifically targeted to addressing post-settlement “stagnation” of restoration planning and/or implementation.

Subcommittee Activities Since March, 2006 Committee Meeting

- In the months since the last meeting, the subcommittee has not been able to coordinate on direction or ideas.
 - Drafted and submitted outreach questions and submitted them to outreach coordinator.
 - Had discussions about measures to combat post-settlement restoration logjam.
 - Had two conference calls. Both calls had participation of only about half of the subcommittee. Subcommittee is also short two subcommittee members, -- one was replaced shortly before this meeting.
- However, some members have been working toward the stated goals on their own, there has been some progression of thought and effort, though full subcommittee hasn't signed off on ideas.

Areas of Recent Focus

- Cooperative Assessment
- Streamlining Integration of Restoration Planning and NEPA Requirements
- Regional Restoration Planning/Prospective Restoration
- Restoration Grant Program

Cooperative Assessment

Members of the subcommittee:

- have been conducting informal outreach efforts to gain new perspectives/"lessons learned"
- have reviewed what the statute and regulations provide that is relevant to cooperative assessment
- have reviewed the material regarding NOAA's cooperative assessment initiative and about cooperative assessment issues generally, available on the NOAA website
- have been considering our own experiences on NRD cases and the generally acknowledged pros and cons of cooperative assessment

Cooperative Assessment

Over the next several months, Subcommittee expects to:

- Develop the content of a recommendation for development of DOI guidance on cooperative assessment;
- Consider feasibility of DOI developing model cooperative assessment agreement(s) to use with PRPs and others to help set expectations and minimize concerns that can exist about cooperative assessment.

Streamlining the Fulfillment of NEPA Requirements in Restoration Planning

- NEPA and Restoration Plan Development
 - Approaches taken to fulfill NEPA requirements vary among DOI agencies
 - Each bureau/regional office that is the lead on a case handles NEPA its own way
 - In some cases, NEPA is integrated into restoration planning procedures
 - In other cases, restoration plan development is followed by independent NEPA review which can take some time.

Streamlining the Fulfillment of NEPA Requirements in Restoration Planning

- Subcommittee will review case law on functional equivalency, review NEPA and CERCLA NRDAR regulations, and develop content of a recommendation for the creation of national DOI guidance on integrating NEPA requirements into the CERCLA restoration planning process.

Streamlining the Fulfillment of NEPA in the Restoration Planning Process

- Identification of Categorical Exclusions
 - Are there types of common restoration activities which might properly qualify for categorical exclusion from further NEPA analysis?
 - Can a type of categorical exclusion be established to apply to settlements which have been supported by consensus processes?

Regional Restoration Planning

- Subcommittee members are currently reviewing regional restoration planning initiatives around the country to see what works well, what doesn't.
- In the coming months, the subcommittee will consider whether to make a recommendation about regional restoration planning.

Restoration Grant Program

- Idea: Use settlement funds to offer grants for restoration projects.
- Solicit bids for restoration projects; bids received are alternatives considered.
- Subcommittee will review relevant authorities to answer the question of whether statute or regulations or any other authorities would preclude/prohibit the use of restoration settlements for grant program to help accomplish restoration more quickly and to promote innovation in restoration planning and implementation.



END